IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.314 OF 2001

IN

WRIT PETITION NO.327 OF 2001

...

Municipal Corporation of Greater
Mumbai & Anr. ...Appellants

v/s.

Poonemchand S. Choubisa & anr. ...Respondents

...

Mr.A.Y.Sakhare for the Appellants.

None for the Respondents.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 26TH SEPTEMBER, 2007

P.C.:

1. By this Appeal, the Appellant challenges the order dated 21st March, 2001 passed in Writ Petition No.327 of 2001.

2. The facts that are material and relevant for deciding this Appeal are that the Respondents had filed Writ Petition No.327 of 2001 challenging the order dated 22-11-2000 passed by the Appellant-corporation. A direction was also sought directing the Corporation to reconstruct the demolished portion of the suit premises. It appears that the notice dated 27-9-2000 was issued by the Corporation under Section 55 of the Maharashtra Regional Town Planning Act, 1966 stating therein that it was reported to the Corporation that the Respondents are carrying out development of temporary nature unauthorisedly indicated in red sketch annexed to the notice without permission from the Authorities. Therefore, the Respondents were called upon to remove the unauthorised development within 15 days from the receipt of the notice.

3. According to Respondents, this notice was received by them. After receiving notice they submitted their representation alongwith documents to the Corporation claiming therein that their structure is authorised. Thereafter, an order was made on 22-11-2000 by the Corporation wherein notice dated 27-9-2000 was referred and it was stated that the documents produced by the Respondents do not show that their structure is authorised. Therefore, they were directed to immediately demolish the structure. It appears that pursuant to the notice dated 27-9-2000 and the order dated 22-11-2000 the structure was demolished. Perusal of the order of the learned single Judge shows that according to the learned single Judge the structure was demolished pursuant to the order dated 22-11-2000. From the order of the learned single Judge it appears that the learned single Judge held that the demolition has been carried out by the Corporation contrary to the provisions of Section 55 of the MRTP Act and therefore, the learned single Judge made rule absolute in terms of prayer clauses (a) & (b). He set aside the order dated 22-11-2000 and also permitted the Petitioner to reconstruct the

structure.

4. The learned Counsel appearing for the Appellant submits that the order dated 22-11-2000 was not a notice issued under Section 55. Notice under Section 55 of the Act was issued on 27-9-2000, which admittedly was received by the Respondents. In that notice they were given 15 days time to remove the unauthorised development. In stead of removing the development, they submitted representation to the Corporation. The documents submitted with the representation were considered by the Corporation and rejected the same by order dated 22-11-2000 and the Respondents were directed to demolish their structure immediately. According to the learned Counsel, therefore, the demolition was carried out in accordance with the provisions of Section 55 of the Act.

5. None appears for the Respondents though served. We have perused the record. Perusal of the order of the learned single Judge shows that the learned single Judge has noted that notice under Section 55 was not issued to the Respondents. However, perusal of the notice which is dated 27-9-2000 shows that it

is issued under Section 55 and in that notice it is clearly stated that the structure of the Respondents is unathorised and they were given 15 days time to remove the structure. Admittedly, they did not remove the structure, in stead they submitted a representation to the Corporation relying on several documents. That representation was considered and rejected by order dated 22-11-2000. It is thus clear from the record that the order dated 22-11-2000 was not a notice contemplated by Section 55. Notice contemplated by Section 55 was notice dated 27-9-2000, which clearly granted 15 days time as contemplated by Section 55 to the Respondents to remove their structure. There is no provisions in MRTP Act which requires or oblige the Corporation to give 15 days time after 22-11-2000. It is, thus, clear that the learned single Judge has committed an obvious error in terming the order dated 22-11-2000 as notice issued under Section 55 of the Act, when clearly in his own judgment the learned single Judge has referred to the notice issued under Section 55 dated 27-9-2000. We find that the demolition was carried out by the Corporation after complying with the requirements of Section 55 and therefore, the learned single Judge was not justified in interfering

in favour of the Respondents and against the Corporation. Perusal of the order of the learned single Judge shows that the learned single Judge while permitting the Respondents to reconstruct the structure did not even make an attempt to find out whether their structure was authorised and constructed in accordance with law. In our opinion, before making an order permitting the Respondents to reconstruct the structure, as the learned single Judge was exercising his extra ordinary jurisdiction under the Constitution, it was necessary for the learned single Judge to find out whether the structure was really authorised structure or not.

6. In the result, therefore, the Appeal succeeds and is allowed. The order of the learned single Judge impugned in the Appeal is set aside. Writ petition No.327 of 2000 filed by the Respondents is dismissed. Rule in that petition is discharged. No order as to costs.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)